

### REMARKS

Claims 15-34 are pending in the application. Claims 15, 17, 18, 22, 24, and 29-34 have been amended for consistency and to better describe certain aspects of the invention. Favorable reconsideration in light of the amendments and the remarks which follow is respectfully requested.

#### Oath/Declaration and Priority

An Application Data Sheet and Declaration-Power of Attorney were indeed submitted in the subject application upon filing with the U.S.P.T.O.; and the Application Data Sheet and the Declaration-Power of Attorney properly include priority application information in compliance with 37 C.F.R. § 1.78(a).

The Declaration-Power of Attorney in fact recites "material to patentability" about half way down on page 1. The Examiner is respectfully requested to reconsider these matters.

#### Objection to the Claims

Claims 29-34 have been objected to for not further limiting subject matter of a previous claim. Claims 29-34 have been amended to correct this informality by better conforming with U.S. patent practice.

#### Indefiniteness Rejection

Claims 15-34 have been rejected under 35 U.S.C. § 112, second paragraph, with regard to antecedent basis. Claims 15-34 have been amended to correct this informality.

#### The Novelty Rejection

Claims 15-21 and 29-32 have been rejected under 35 U.S.C. § 102(b) over Erickson (U.S. Patent 6,368,350). Erickson relates to an intervertebral prosthetic

device (IPD). The IPD 10 includes a first end piece 20, a second end piece 21, and an intermediate piece 22 (Fig. 6). The IPD provides rotational freedom and translational freedom (Abstract). The intermediate piece has a peg 271 and the first end piece 20 has a track 251 (Figs. 20-24).

Generally speaking, the intervertebral disk is the weakest member in an intervertebral disk implant combination of an intervertebral disk, cover plate, and base plate. Thus, the intervertebral disk incurs the strongest wear. As a result, it is very important for the longevity of an intervertebral disk implant to have minimal wear of the intervertebral disk. One way to minimize wear is to distribute pressure evenly over the entire surface of the intervertebral disk. Contact area between the cover plate and intervertebral disk is maximized while maintaining mobility.

The intervertebral disk implant of claim 15 maximizes contact area between the cover plate and intervertebral disk and distributes pressure evenly on the intervertebral disk over the entire articulating surface, as the articulating concave surface of the intervertebral disk and the articulating concave surface of the cover plate and/or the articulating concave surface of the cover plate and the articulating concave surface of the intervertebral disk have the same radii.

Such an arrangement ensures that pressure is distributed evenly over the entire articulating contact area and also that with movement of the intervertebral disk and cover plate, the even pressure distribution on each part does not change relative to each other. In other words, the unique structure of the articulating surfaces, the intervertebral disk implant incurs markedly less wear and thus has a much longer life span than conventional implants. This is a significant advantage because in the field of surgical implants, where each instance of replacing an implant introduces potentially fatal risks to the patient.

To establish anticipation, each and every claim feature must be disclosed in a single cited art document. Claim 15 recites an intervertebral disk implant with a cover plate seated on an intervertebral disk in such a way that the articulating surface

of the intervertebral disk and the articulating surface of the cover plate are each located on a respective spherical partial surface with the SAME RADII. Erickson fails to disclose an intervertebral disk implant with a cover plate seated on an intervertebral disk in such a way that the articulating surface of the intervertebral disk and the articulating surface of the cover plate are each located on a respective spherical partial surface with the same radii. Since Erickson does not disclose all of the claimed features, Erickson cannot anticipate claims 15-21 and 29-32. Withdrawal of the rejection is therefore respectfully requested.

#### The Obviousness Rejection

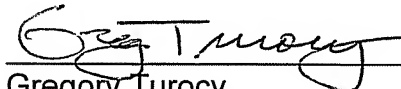
Claims 22-28, 33, and 34 have been rejected under 35 U.S.C. § 103(a) over Erickson in view of Diaz et al (U.S. Patent 7,083,651). Diaz relates to a spinal implant. The subject application has a priority date of December 31, 2003 (owing to DE Application No. 103 61 772.8). The priority date of December 31, 2003 is earlier than the filing date and the publication date of Diaz et al. Since the claimed subject matter is disclosed in DE Application No. 103 61 772.8, Diaz et al is not citable art against the subject application. Withdrawal of the rejection is therefore respectfully requested.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,

**AMIN, TUROCY & CALVIN, LLP**

  
\_\_\_\_\_  
Gregory Turocy  
Reg. No. 36,952

24<sup>th</sup> Floor  
1900 East 9<sup>th</sup> Street  
Cleveland, Ohio 44114  
(216) 696-8730  
Fax (216) 696-8731